

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re N.O., a Person Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

M.G.,

Defendant and Appellant.

G052726

(Super. Ct. No. DP024730)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Gary L. Moorhead, Judge. Reversed and remanded with directions.

Brian M. Mahoney, under appointment by the Court of Appeal, for Defendant and Appellant.

Leon J. Page, County Counsel, Karen L. Christensen and Jeannie Su, Deputy County Counsel, for Plaintiff and Respondent.

THE COURT:^{*}

M.G. (Mother) appealed from the order terminating her parental rights to N.O. (Welf. & Inst. Code, § 366.26.) Mother filed an opening brief alleging inadequate compliance with the inquiry and notice requirements of the Indian Child Welfare Act (ICWA). (25 U.S.C. § 1901 et seq.; Cal. Rules of Court, rule 5.480 et seq.) On January 13, 2016, the parties filed a joint application and stipulation for reversal of judgment and remand. After complying with the provisions of Code of Civil Procedure section 128, subdivision (a)(8), we accept the stipulation and reverse the Welfare and Institutions Code section 366.26 order with the requested directions.

FACTS AND PROCEDURE

Two-month old N.O. was detained in March 2014, and ultimately declared a dependent child, based on allegations of physical abuse. Mother informed Orange County Social Services (SSA) social workers and the juvenile court she had possible Native American Indian heritage—an affiliation with the Sioux Indian tribe on her maternal grandmother’s side of the family. SSA served ICWA-030 forms (Notice of Child Custody Proceeding for Indian Child) for hearings set for April 15, 2014, and May 1, 2014, on the Bureau of Indian Affairs, the Secretary of the Interior, and various Sioux Indian tribes, in which the names of N.O.’s maternal grandmother and maternal great grandmother were misspelled. The tribes responded that N.O. was not eligible for enrollment. At the July 22, 2014, jurisdictional hearing the juvenile court found ICWA did not apply to N.O.

After receiving 12 months of services, Mother was unable to reunify with N.O. At the permanency planning hearing on October 14, 2015, parental rights were terminated. Mother appealed. SSA and Mother have stipulated that the order should be reversed and the matter remanded for further proceedings concerning ICWA notices.

^{*} Before Rylaarsdam, Acting P.J., Aronson, J., and Fybel, J.

STIPULATION

A stipulated reversal under Code of Civil Procedure section 128, subdivision (a)(8) is permissible in a dependency case when the parties agree that reversible error occurred, and the stipulated reversal will expedite the final resolution of the case on the merits. (*In re Rashad H.* (2000) 78 Cal.App.4th 376, 380-382.)

The parties have stipulated as follows: “(1) [that] it is in the interest of the parties to avoid prolonged litigation involving the application of [ICWA]; (2) that the judgment and orders of the October 14, 2015 selection and implementation hearing under Welfare and Institutions Code section 366.26 be vacated, because the trial court failed to make the proper finding regarding notice and the minor’s eligibility or ineligibility for membership in the Sioux Tribes which is necessary to determine whether ICWA actually applies (California Rules of Court, rule 5.481); (3) that the case be remanded and on remand the juvenile court be directed to conduct a hearing to insure the Sioux Tribes received proper notice under the ICWA; (4) that at that hearing on remand, if the trial court is provided proof of proper notice as detailed herein and the Sioux Tribes have determined that the minor is a member or eligible for membership in the tribe, the court shall proceed according to the dictates of ICWA, or (5) that if the trial court is provided proof of proper notice as detailed herein and a determination that the minor is not a member or eligible to be a member of the Sioux Tribes, the court shall then reinstate its orders terminating parental rights; and (6) that the remittitur issue forthwith.”

We have examined the appellate record and agree reversal is appropriate given the errors in the ICWA notices contained in the record. The appropriate course is to reverse and remand to permit SSA to provide the appropriate tribes with sufficient notice of the proceedings under ICWA, and to permit the juvenile court to conduct further proceedings and make appropriate ICWA findings. (*In re K.M.* (2015) 242 Cal.App.4th 450, 458-459.) We find “there is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal” in this case. (Code

Civ. Proc., § 128, subd. (a)(8)(A).) Further, “[t]he reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement.” (Code Civ. Proc., § 128, subd. (a)(8)(B).)

DISPOSITION

Pursuant to the parties’ stipulation, the order terminating parental rights is reversed. The juvenile court is directed to order SSA to provide the appropriate tribes with proper notice of the proceedings under ICWA. If the trial court is provided proof of proper notice and a tribe has determined N.O. is a member or eligible for membership in the tribe and the parent is a member, the court shall proceed according to the mandates of the ICWA. In the alternative, if the trial court is provided proof of proper notice and a determination is made that N.O. is not a member or eligible to be a member of the tribes, the court shall then reinstate its orders terminating parental rights. The remittitur shall issue immediately. (Cal. Rules of Court, rule 8.272(c)(1).)